

County Court Clerk, Ellis E. Featherstone, presented the following to the Court:

R E S O L U T I O N

WHEREAS, the United States of America has submitted a proposed contract between the County of Weakley, State of Tennessee, owner, and the United States of America, which contract is designated "Contract No. DA-40-041-CIVENG-65-57" and which contract is in words and figures as follows, to wit:

Contract No. DA-40-041-CIVENG-65-57

Date:

CONTRACT WITH OWNER FOR RELOCATION, REARRANGEMENT
OR ALTERATION OF FACILITIES

Owner and Address: COUNTY OF WEAKLEY, STATE OF TENNESSEE,
DRESDEN, TENNESSEE

Contract for: Acceptance and maintenance of one bridge to be
constructed by the Government as necessitated
by the channel improvement of Middle Fork Obion
River, West Tennessee Tributaries Project.

Location : Weakley County, Tennessee

Payment: None

The supplies and services to be obtained by this instrument are authorized by, are
for the purposes set forth in, and are chargeable to the following appropriation:

96X3112 - Flood Control, Mississippi River
and Tributaries, Allotment for West
Tennessee Tributaries Project

Contract No. DA-40-041-CIVENG-65-57

CONTRACT WITH OWNER FOR RELOCATION, REARRANGEMENT
OR ALTERATION OF FACILITIES

THIS CONTRACT, entered into this _____ day of _____ by and
between the United States of America, hereinafter called the "Government,"
and represented by the Contracting Officer executing this contract, and
the County of Weakley, State of Tennessee, hereinafter called the "Owner,"
represented by Weakley County; and acting through the Board of Highway
Commissioners of Weakley County pursuant to the laws of Tennessee,
TCA 5-103, 5-521, 54-902 and Chapter 444 of the private acts of 1937:

WITNESSETH THAT:

WHEREAS, the Government has under authority of the Flood Control Act approved
15 May 1928, as amended by subsequent Acts including the Act approved 30 June 1948
(Public Law 858, 80th Congress), undertaken the development of an improved flood
control system along Middle Fork Obion River, involving the realignment and enlargement
of Middle Fork Obion River (a part of the West Tennessee Tributaries Project) extend-
ing upstream from river mile 0 along the line of improvement to river mile 14.20 lo-
cated in Weakley County, Tennessee (hereinafter called the "Project"); and

WHEREAS, the Owner is the holder of certain fee title and/or easement rights
appurtenant thereto on which the Owner has constructed and is operating and main-
taining certain facilities consisting of one county road at the location designated
Weakley County Road, Mile 4.5 on map entitled "Locality Map," Serial 17814, File 162//
278, marked Exhibit A and attached hereto and made a part hereof, which interfere with
the development and use of the Project by the Government; and

WHEREAS, it is necessary in the construction, completion and enjoyment by the
Government of said Project that the aforementioned title, rights and privileges of the
Owner be acquired, abandoned, relinquished, or modified and restricted, and that
said facilities of the Owner be removed, rearranged or altered; and

WHEREAS, the Owner is willing to subordinate to the Government or its local co-
operating agency, the Tennessee Department of Highways, all its right, title and
interest in and to the said road, and/or right of way and to authorize the Government
to construct a new bridge, and alter the approaches, and facilities in such manner as
to eliminate interference with the construction, development, use and enjoyment by
the Government of said Project; and the Owner agrees that the construction of said
bridge and the alteration of approaches and facilities, by the Government in the
manner hereinafter agreed upon shall constitute full, just and complete compensation
by the Government for the Owner's rights and property.

NOW, THEREFORE, in consideration of the faithful performance of each party of
the mutual covenants and agreements hereinafter set forth, it is mutually agreed
as follows:

ARTICLE 1. Obligations of the Owner.

a. The Owner shall make available for use by the Government in accomp-
lishing the alteration of facilities provided for in this contract those rights of
way of the Owner which lie within the limits of the alteration, as shown on map,
Serial 17814, File 162/379, attached hereto and forming a part hereof and designated
Exhibit B.

b. The Owner shall close the road to traffic during the period the bridge is constructed. The road shall be closed by Owner upon receipt of request from the Government and shall remain closed until receipt of notice from the Government that it may be opened to traffic.

c. The Owner shall execute and deliver to the Government, or its local cooperating agency, the Tennessee Department of Highways, a subordination of its right, title, and interest in and to the bridge and that portion of its existing road right of way to be retained for use in connection with the maintenance of the structure and road facilities to be constructed hereunder, to the right of the Government, or the above-named local cooperating agency, to construct, operate and maintain the project. The subordination agreement shall be in substantial conformity with the form of instrument attached hereto, and marked Exhibit C.

d. The construction of the bridge and alteration of approaches provided for herein are to be performed at the location designated on Exhibit A as Weakley County Road, Mile 4.5. The Owner agrees that the bridge and facilities constructed hereunder shall become the property of the Owner, and the Owner agrees to accept ownership and responsibility for maintenance thereof after completion. Responsibility of the Owner hereunder for the bridge shall begin upon receipt of notice from the Government that the bridge has been completed.

ARTICLE 2. Obligations of Government.

a. The Government shall prepare detailed plans and specifications for the construction and alteration of the bridge, and bridge approaches at the location shown on drawing, Serial 17814, File 162/378, designated Exhibit A, and attached hereto and made a part hereof. The rearrangement and alteration of the road and construction of the bridge shall be along the alignment shown on said drawing and design shall be in accordance with the basic data shown on drawing, Serial 17814, File 162/379, designated Exhibit B, attached hereto and made a part hereof.

b. The bridge shall be treated timber pile type with precast prestressed concrete deck units equal to the type of bridge presently employed on similar facilities in this area. The bridge will be constructed to engineering design criteria comparable to other county bridges constructed to present standards in this area, as follows:

- (1) Bridge structure shall have a 20-foot clear roadway.
- (2) H-15 loading.

c. The Government shall furnish all services, labor, materials, tools, and equipment necessary to, and shall construct the bridge and perform the alteration of the approaches in accordance with the plans and specifications prepared therefor, as provided in paragraphs a and b of this Article 2.

d. The Government, or its local cooperating agency, the Tennessee Department of Highways, shall obtain all easements, rights of way, or other interests in real property necessary for the performance of this contract, except the rights of way owned by and to be made available by the Owner as provided in Article 1a hereof. The Government, or its local cooperating agency, the Tennessee Department of Highways, shall convey to the Owner by good and sufficient deed or conveyance an easement or right of way over the altered routes for the purpose of maintaining and operating the bridge and altered facilities provided for herein, reserving, however, to the Government and the Tennessee Department of Highways, the right to flood and inundate said right of way, including the structures and facilities situated thereon, in the construction, operation and maintenance of the West Tennessee Tributaries Project.

ARTICLE 3. Interference. The Owner agrees that so long as the Project is operated or maintained for the purpose as described herein, the bridge constructed and the facilities as relocated, rearranged or altered pursuant to this contract shall not be so further altered or modified nor other facilities constructed by Owner, so as to interfere with the operation of the Project.

ARTICLE 4. Release. The Owner agrees that the completion of the bridge and the relocation and/or alteration work provided for herein shall constitute full and just compensation for any and all damages and injury that have been caused, or that may be caused to the facilities altered or constructed hereunder by reason of the construction and maintenance of the Project, and the Owner agrees to and does hereby release and agrees to save and hold the Government harmless from any and all causes of action, suits at law or equity, or claims or demands or from any liability of any nature whatsoever for or on account of any damages to the lands, rights of way and facilities of the Owner, any damages to the lands, rights of way and facilities of the Owner, or in any way growing out of the construction, operation and maintenance of the Project, after completion of the bridge and alteration work.

ARTICLE 5. Inspection. The Government will inspect the work to be performed hereunder during its progress and will make final inspection upon completion.

ARTICLE 6. Completion. The Government will commence the work hereunder as soon as practicable after execution of this contract and will proceed diligently to complete the work at the earliest practicable date.

ARTICLE 7. Condemnation. Should it be determined for any reason that the right title and interest of the Owner in and to the lands referred to in Article 1 above shall be acquired by condemnation or other judicial proceedings, the Owner shall cooperate in the prosecution of the proceedings and this agreement shall, without more, constitute a stipulation which may be filed in the proceedings and be final and conclusive evidence of the adjustments to be made to the facilities herein mentioned.

ARTICLE 8. Disputes. a. Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decisions to writing and mail or otherwise furnish a copy thereof to the Owner. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Owner mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the head of the agency involved. The decision of the head of the agency or his duly authorized representative for the determination of such appeals shall be final and conclusive. This provision shall not be pleaded in any suit involving a question of fact arising under this contract as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged: Provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Owner shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Owner shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

b. This Disputes clause does not preclude consideration of questions of law in connection with decisions provided for in paragraph above. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

ARTICLE 9. Covenant Against Contingent Fees. The Owner warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Owner for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

ARTICLE 10. Officials Not to Benefit. No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

ARTICLE 11. Gratuities. a. The Government may, by written notice to the Owner, terminate the right of the Owner to proceed under this contract if it is found, after notice and hearing, by the Secretary or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Owner, or any agent or representative of the Owner to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract; provided, that the existence of the facts upon which the Secretary or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

b. In the event this contract is terminated as provided in paragraph a hereof, the Government shall be entitled (1) to pursue the same remedies against the Owner as it could pursue in the event of a breach of the contract by the Owner, and (1i) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Owner in providing any such gratuities to any such officer or employee.

c. The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

ARTICLE 12. Definitions. a. The term "head of the agency" or "Secretary" as used herein means the Secretary of the Army; and the term "his duly authorized representative" means the Chief of Engineers, Department of the Army, or an individual or board designated by him.

b. The term "Contracting Officer" as used herein means the person executing this contract on behalf of the Government and includes a duly appointed successor or authorized representative,

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA

BY _____

ATTEST:

COUNTY COURT OF WEAKLEY COUNTY,
TENNESSEE

/s/ Ellis E. Featherstone
County Clerk of Weakley County,
Tennessee

BY /s/ Cayce Pentecost
County Judge

BOARD OF HIGHWAY COMMISSIONERS OF WEAKLEY COUNTY

ATTEST:
/s/ Lillian Anderson

BY /s/ Leonard Bynum

Secretary

Chairman